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Supreme Court, U.S.
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# In the
# Supreme Court of the United States

OCTOBER TERM, 1992

JOHN R. HELTON, JEFF L. HIRZEL,
JAMES W. LITTLE, PHILIP E. SNODDY,
MARVIN L. WYNN,
Each, Individually and as a partner of
Sooner Vista, a partnership,

PETITIONERS,

v.

F.D.I.C., Receiver for Victor
Savings and Loan Association,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS, DIVISION 4,
STATE OF OKLAHOMA

## PETITION FOR WRIT OF CERTIORARI

R. M. HELTON
Counsel for Petitioners
713 Lamar Street
Wichita Falls, Texas 76301
Tel. 817-723-0729, 817-766-2828

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

20 pp

## QUESTIONS PRESENTED

No. 1

Did the summary judgment of the trial court in favor of respondent, F.D.I.C., Receiver, against the petitioners, take their property without due process of law, secured to them by the 14th Amendment, U.S. Constitution?

No. 2

Was this 'taking' approved by division 4, Court of Appeals, State of Oklahoma and the Supreme Court of Oklahoma by each court's refusal to review the trial court's lack of jurisdiction to apply two inapplicable federal laws and thereby each appeal court deprived petitioners of 14th Amendment, U.S. Constitution, due process of law?

## STATEMENT ABOUT PARTIES

A list of all parties in the proceeding in the court whose judgment is sought to be reviewed appear in the caption of the case.

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## Reference to the opinion of the court below

The memorandum opinion of the court below—Division 4, Court of Appeal, Oklahoma, was ordered to not be published. It is found in Appendix "B", Item 8, at page A-146.

## Grounds for Jurisdiction

The date of the order sought to be reversed was November 8, 1989, Appendix "A", Item 8, page A-90. The date of the order respecting rehearing was September 23, 1992, Appendix "B", Item 12, page A-167.

Title 28 U.S.C. § 1257(a) is believed to confer jurisdiction to review this case. The *italicized* words are relied upon:

> "*Final judgments or decrees rendered by the highest court of a State in which a decision could be had may be reviewed by the Supreme Court by writ of certiorari* *** *when any* title, *right* privilege or immunity *is specifically set up against claims under the Constitution,* or treaties *or statutes of,* or any commission held or authority exercised under, *the United States.*"

It is the 'right' to have a summary judgment for money rendered by a state trial court against petitioners, which had subject matter jurisdiction and authority to render the judgment in question.[1] The jurisdiction and authority used and relied upon by the state trial court that

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[1] This sentence describes the process due petitioners from the Oklahoma trial court by the 14th Amendment, U.S. Constitution. *Scott v. McNeal, infra.*

rendered the summary judgment assailed on appeal, was two laws of the United States.[2] Whether these two federal laws applied to supply the described jurisdiction of the trial court, *is disputed.* The highest court in the state, in which a decision could be had, declined and refused to review and annul a summary judgment for money that a state trial court had no subject matter jurisdiction to grant.

*Scott v. McNeal*[3] stands for the following rule: A state trial court judgment for money that was rendered without subject matter jurisdiction takes the property of the judgment debtor, (petitioners), without due process of law, in violation of of the 14th Amendment, U.S. Constitution.

When the dispute arises from the contract sought to be enforced, *D'Oench Duhme* case doctrine and 12 U.S.C. § 1823(e) have no application to a F.D.I.C. loan enforcement suit.[4]

The contract sought to be enforced was the alleged, so-called, 'guaranty agreement' of each petitioner.

The dispute results from disagreement over the liability intended by the parties arising from each agreement. The petitioners contend that the agreement is not an Oklahoma form of statutory guaranty because it is not a promise to answer for the debt of another; that it is a primary obligation of the debtor intended to limit their

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[2] *D'Oench Duhme* case, 325 U.S. 447, 62 S.Ct. 676, 86 L.Ed. 956 (1942) doctrine and 12 U.S.C. § 1823(e).

[3] 154 U.S. 34, 14 S.Ct. 1108, 38 L.Ed. 896, (1904).

[4] Authorities in support of this statement are cited in the section stating the reasons to grant the writ.

liability arising from the partnership note. The respondent contends that the agreement is an agreement with a promise that was collateral to and independent from the partnership note. In addition, respondent contends that these two federal laws preempt all Oklahoma law that permits petitioners to make this contention.

In essence, respondents contend that these two federal laws authorized the respondent to decide what the agreements mean and that petitioners are barred and precluded of all right to contest.

Petitioners say and contend that their right to contest presents a federal due process right and presents a federal question that this Court has jurisdiction to review. Petitioners present and rely upon *Coe v. Armour Fertilizer Works,* 237 U. S. 413, 35 S.Ct. 625, 59 L.Ed. 1027, (1914) to sustain this contention.

Applicability to this case of these two federal laws presents a federal claim. This presents a construction question for a court. Federal laws are required to be construed for or against their applicability. The applicability of these two federal laws has been adversely decided against petitioners by the highest court of Oklahoma in which a decision could be had. The disputed construction or effect of some law of the U.S. upon the determination of which result depends, is matter that this Court reviews. *Norton v. Whiteside,* 239 U.S. 144, 36 S.Ct. 97, 60 L.Ed.186, (1915), citing *Hull v. Burr,* 234 U.S. 712, 34 S.Ct. 892, 58 L.Ed. 1557, 1913.

**The Constitutional provisions,**
**Congressional Acts and Case doctrine**
**involved in this case**

## U.S. Constitution

Article XIV, U.S. Constitution, provides in relevant part:

> " * * * [N]or shall any State deprive any person of * * * property without due process of law. * * * ."

## U.S. Code

Title 12 U.S.C. § 1823(e) provides:

> "No agreement which tends to diminish or defeat the interests of the Corporation in any asset acquired by it under this section or section 1821 of this title, either as security for a loan or by purchase or as receiver of any insured depository institution shall be valid against the Corporation unless such agreement (1) is in writing. (2) was executed by the depository institution and any person claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the depository institution, (3) was approved by the board of directors of the depository institution or its loan committee, which approval shall be reflected in the minutes of said board or committee, and (4) has been continuously, from the time of its execution, an official record of the depository institution."

## D'Oench Duhme case doctrine

*D'Oench Duhme & Co. v. F.D.I.C.* 325 U.S. 447, 62 S.Ct. 676, 86 L.Ed. 956, (1942), is the case, respondent, F.D.I.C. cites and relies upon. Respondent names it in "*D'Oench Duhme* case doctrine".

Petitioner approves of this name.

Petitioner will make a summary of the doctrine, subject to any exception taken by respondent.

> The *D'Oench Duhme* case doctrine preempts state law defenses based on oral or written matters arising collaterally and independently from the asset papers sought to be enforced by F.D.I.C. or F.S.L.I.C., which were concealed from the fiscal examiner of the insurance funds' agency. It is a conditional preemption law. It construed the National Banking Act, as amended. The majority opinion grounds its position upon the doctrine of estoppel. The petitioners say it is also grounded upon the Supremecy clause of Art. VI, U.S. Constitution. But, it is conditionally preemptive. One condition was noted by Mr. Justice JACKSON in his concurring opinion, 315 U.S. at 474, 62 S.Ct. at 687, [quote]
>
> "No doubt many questions as to the liability of parties to commercial paper which comes into the hands of the Corporation will best be solved by applying the local law with reference to which the makers and the insured bank presumably contracted. The Corporation would succeed only to the rights which the bank itself acquired where ordinary and good faith commerical transactions are involved. * * *."

**Statement of the jurisdictional case.**

**State in the proceeding in the state Court when the federal question sought to be reviewed we raised:**

It was set up in the amended petition in error of petitioners, filed in the Oklahoma Supreme Court. There, it was

stated in Exhibit "C". Appendix "B", Item 1, page A-115.

**Method or manner in which the federal questions were raised and the way they were passed upon, in this case, by Division 4, Oklahoma Court of Appeals.**

The method or manner used to set up the federal law claims was in Exhibit "C" to the petition in error and by an original brief and reply brief in support thereof. The Appellate Court record of Exhibit "C" is stated next above. The entire 'Subject Index' of the original brief is found in Appendix "B", Item 6, page A-129. The entire 'Subject Index" of the reply brief is found in Appendix "B", Item 7, page A-135.

**The way these set up federal claims were passed upon by the Court of Appeals**

The Court of Appeals rendered an unpublished written opinion and ordered the assailed summary judgment of the trial court "affirmed". It is found in Appendix "B", Item 8, page A-146. A rehearing was requested. It is found in Appendix "B", Item 9, page A-151. Rehearing was denied. It is found in Appendix "B", Item 10, page A-156. A petition for a writ of certiorari to the Oklahoma Supreme was filed. It is found in Appendix "B", Item 11, page A-159. It was denied. Denial order is found in Appendix "B", Item 12, page A-167.

The appeal to this Court is made pursuant to Title 28 U.S.C. § 1257(a), from the "highest court of a State in which a decision could be had", as this Appellate Court record reflects, from Division 4, Oklahoma Court of Appeals. However, the appeal deadline time to this Court is to be measured from the date the Oklahoma Supreme Court

refused appeal by writ of certiorari. By rule, there is no right for a rehearing of the Supreme Court's refusal to grant a writ of certiorari.

Petitioners believe that they understand the rule of decision of this Court to be that local law governs the method, means and time fixing the scope of state court appellate review of claimed trial court errors and makes that law applicable to claims of trial court error arising therefrom and out of federal law.

The procedure and practice time limits to set up a claim for appellate review in Oklahoma appeal courts of law questions that grant state trial courts a subject matter jurisdiction, is found in *Hunter v. Hill.* Okl. 1975, 536 P.2d 358, 361. It is as late as the petition for rehearing in a Court of Appeals. It is probably as late as the petition for certiorari to the Oklahoma Supreme Court. This rule, in Oklahoma, is limited to cases in the trial court where the question involves fundamental or jurisdictional error. The *Hunter* case is in point because it directly involved a question of the trial court's subject matter jurisdiction. Petitioners rely upon its applicability. Petitioners set up the trial court's lack of subject matter jurisdiction *under federal law* in their amended petition in error addressed to the Oklahoma Supreme Court. Appendix "B", Item 1, Exhibit "C", page A-115, and their original brief, Appendix "B", Item 6, page A-129 and reply brief, Appendix "B", Item 7, page A-149.

Petitioners say and contend that their claimed trial court federal law errors were properly 'set up' and were 'timely' set up.

There remains, as a part of the statement of the jurisdictional case, the question of whether the Oklahoma

Court of Appeals made an adequate *and* independent, (both are required), decision adverse to the petitioners, grounded upon Oklahoma law.

Petitioners say and contend that the Court of Appeals never made an adequate *and* independent decision in reliance upon Oklahoma law uponwhich to ground the affirmance order; or, in the alternative that the opinion's reference to the existence of U.S. Constitutional claims reflects that court's notice and knowledge of petitioners' federal law claims and thus, they did decide and deny them. Petitioners say and contend that the court of Appeals affirmance order was sufficiently erroneous as to invoke this court's rule and decision in *Lawrence v. State Tax Commission*, 286 U.S. 276, 282, 52 S.Ct. 556, 558, 76 L.Ed. 1102 (1932). "Constitutional rights are denied as well by the refusal of the state court to decide the question, as by an erroneous decision of it." Petitioners say and contend that Third Circuit Court's Mr. Justice ALDISERT's description of the opinion as being "tite-lipped" is a proper description of the opinion of the Court of Appeals. See, *Super Tire Eng. Co. v. McCorkle*, 1977, 550 F.2d 903, 907. The Court of Appeals never discharged its jurisdiction duty stated in the *Pointer* case, that of deciding whether the trial court rightly or wrongly used and relied upon two federal laws to support its jurisdiction to invoke preemptive federal law and totally exclude all Oklahoma law. Surely, the Court of Appeals never read *Riverside Park Realty Co. v. F.D.I.C.*, 1987, M.D.Tenn. 465 F.Supp. 305, 321, et seq. cited to it in petitioners' reply brief, Appendix "B", Item 7, pages A-136, A-138, A-139, A-142, A-144 and A-145. Surely, it never read *Scott v. McNeal*, supra, cited to it, *Id.* page A-141. The Court of Appeals was tendered but one ultimate issue or question in the amended petition in error. It never directly decided the one single trial court jurisdic-

tional subject matter set up in the amended petition in error. It departed therefrom and rendered merely advisory remarks about matters not in dispute that were settled in the trial court by not being presented in the amended petition in error. The Court of Appeals never did see in the record the amended answer of the petitioners, Appendix "A", Item 2, page A-41, §3. The lengthly footnote 1 in the opinion is an illusion of that court. It was about matter not remotely presented for review in the amended petition in error. Exhibit "C" to the amended petition in error stated what the appeal was all about. There was but one ultimate question briefed in two briefs for the use and benefit of the Court of Appeals—that of the trial court's subject matter jurisdiction arising under two federal laws. Were they applicable? Their non-applicability was the subject of *Riverside Park Realty*. The climax of that case was that F.D.I.C. was a party. It was about laws applicable to no one else in America except F.S.L.I.C. and F.D.I.C. *The most important single document in this lengthy record of this case is the self-written order refusing to reconsider of the honorable, honest and candid trial Judge, Sam P. Fullerton.* It is Appendix "A", Item 8, page A-90.

Incorporated herein by reference are four more lower federal court cases that go with *Riverside Park Realty,* which are cited in the section of this petition, entitled, 'Reasons to grant the writ'. In these four cases, F.D.I.C. was a party. Three are Circuit Court cases and one is a District Court case.

**Summary**

Subject to being wrong, petitioners believe that there are six elements of this Court's reviewing jurisdiction:

1. Has Congress authorized it by a specific statute?

2. Is review sought here about a federal jurisdictional law error in a state court trial?

3. In the state court system, was the federal jurisdictional law's error timely revealed to the state court system?

4. Is local law to be used to fix that time?

5. In good faith, did the Court of Appeals of Oklahoma adequately and independly (both are required) rest its decision upon Oklahoma law in holding adversely to the petitioners?

6 Did the state trial court's federal jurisdictional law error operate to invade the petitioners' 14th Amendment due process rights?

Petitioners believe that they have satisfied these six elements. This is a unique jurisdiction law case.

**Reasons to grant the writ.**

The state court summary judgment conflicts with the Spirit of the *D'Oench Duhme* case, as stated by Mr. Justice JACKSON in his concurring opinion, 315 U.S. 447, 475, 62 S.Ct. 676, 687, 86 L.Ed. 956, 1942.

> "* * * No doubt many questions as to the liability of parties to commercial paper which comes into the hands of the Corporation will best be solved by applying the local law with reference to which the makers and the insured bank presumably contracted. The Corporation would succeed only to the rights which the bank itself acquired where ordinary and good-faith commercial transactions are involved. * * * ."

The trial court in its course and conduct of the case and in its decision to grant the assailed summary judgment, held, that the *D'Oench Duhme* case doctrine and Title 12 U.S.C. § 1823(e), were federal laws, jurisdictional in nature, binding upon the court, commanding and requireing the court to disregard Oklahoma law that would have required the court to compel the respondent to prove the truth of its allegations pretaining to the petitioners' money liability to the respondent, and, pursuant to the command of such federal law, that the court was required to find, that, under Oklahoma law, that there were no material disputed questions of fact that would require the court to call a jury. Accordingly, the trial court granted, summarily, all relief that respondent had requested. The above described procedural course and conduct of the case conflicts with and is contrary to the following U.S. Circuit Court cases:

(1) *Howell v. Continental Credit Corp.*, 7th Cir., 1981, 655 F.2d 743, opinion by Justice PELL;

(2) *F.D.I.C. v. Merchants Nat. Bank of Mobile,* 11th Cir., 1984, 725 F.2d 634, opinion by Justice GODBOLD;

(3) *F.C.I.C. v . Panelfab Puerto, Ins.,* 1st Cir., 1984, 739 F. 2d 26, opinion by Justice PETTINE.

In accord are the following U.S. District Court cases:

(1) *Riverside Park Realty Co. v. F.D.I.C.,* M.D.Tenn., [6th Cir.], 1978, 465 F.Supp. 305, opinion by Chief Dist. Judge MORTON; (2) *F.D.I.C. v. Rivera-Arroyo,* D.C. Pureto Rico, [1st Cir.], 1986, 645 F.Supp. 511, opinion by Judge CEREZO.

In operation and effect, the course and conduct of the trial before the trial judge produced the summary judgment. But, according to the above cited five federal court cases, these two federal laws were not applicable. The jurisdictional facts that would make them applicable were not present. The course and conduct of the trial lacked the support of the federal law used and relied upon. It was not applicable and therein is found the vice. The vice destroyed the court's authority and subject matter jurisdiction. The trial court had no discretion to conduct the trial according to inapplicable jurisdiction creating federal law. Mr. Justice MARSHALL said in *Worcester v. Georgia*, 6 Pet. 515, 541, 8 L.Ed. 483, that "Those who fill the judicial department have no discretion in selecting the subjects to be brought before them." The trial court's use and reliance upon inapplicable, jurisdiction creating federal law as the basis to manage the course and conduct of the trial, was the act of a court that was *corum non judice* and null and void. Its fruit, the summary judgment was likewise, null and void. It was null and void *ab initio*. It purported to transfer money from the petitioners to the respondent.

The mis-managed course and conduct of the trial conflicts with the decision of this Court in *Scott v. McNeal*, 1904, 154 U.S. 34, 14 S.Ct. 1198, 38 L.Ed. 896. In *Scott v. McNeal*, there was a mis-managed trial in the local district court that was followed by a mis-managed appeal in the state's Supreme Court. This bench case presents a duplicate event. The litigants are different and the state is different, but *the action* is a duplicate.

Some exerpts from the petition for a writ of certiorari to the Oklahoma Supreme Court show a reasonable reason, in light of this Court's repeated pleas to the bench and bar of this nation, why this Court should grant the writ requested. There is quoted the following from Appendix "B", Item 11 page A-159:

> 'The Court of Appeal's decision to refuse to review this case since it involved 14th Amendment due process constitutes *extreme* departure from the Court's accepted and usual course of judicial proceedings. Refusal to review by the Oklahoma Supreme Court will cast Oklahoma into the same position that the State of Washington found itself in *Scott v. McNeal*, 1904, 154 U.S. 34, 14 S.Ct. 1108, 38 L.Ed. 896."

In the same Appendix, and Item, page A-163.

> "The second arises from the State-Federal relationship. The U.S. Supreme Court has established a policy that it much prefers that the highest Court of a state have the first opportunity to rule upon a U.S. Constitutional question, where it is asserted by a person in a state Court that state action has invaded the U.S. Constitution. Such opportunity is in this case hereby offered to Oklahoma's highest Court. There is not any other fact needed."

The "not any other fact needed" was a reference to reasons to grant the writ.

This case involves the sensitive and often difficult-to-solve-problems, which are increasing, of our nations' dual-federalism. To some people, without much thought, this case would be viewed as a local problem. To others with some thought, this case would be viewed as a national problem. It is believed by the petitioners' counsel that there are many more people in this nation that are concerned with our dual-federalism than there are people who are not concerned. If this be true, that would be a plus as to why this Court's limited resources etc. should be given to this case. Also, it could be, that the court at this time, needs to

take and decide this case, to send out another message to our State high courts that they must *better* share in this Court's never ending, increasing burden to decide civil constitutional law cases. Why two Oklahoma appeal court's refused to explicitly rule and write upon the fundamental jurisdiction question presented to them is not understandable to petitioners' counsel.

**Relief Requested**

Petitioners request that this Honorable Highest Court in our Nation grant the writ sought and thereby give the petitioners permission to sue the respondent in this Court.

Very respectfully presented

/s/ R. M. Helton

R. M. Helton,
A solo practitioner,
a member of the Bar
of this Court.
713 Lamar Street,
Wichita Falls, TX, 76301.
Tel. # 817-723-0729.
My residence address is
2407 Martin Street,
Wichita Falls, TX 76308
Tel. # 817-766-2828.